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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 202 OF 2006

Sherbahadur Akram Khan & 6 ors. ... Appellants

V/s

The State of Maharashtra ... Respondent

ALONGWITH

CRIMINAL APPEAL NO. 980 OF 2006

Akhtar Hussain Siddiqui ... Appellant

V/s

The State of Maharashtra ... Respondent

Mr. Majeed Mamon with P. Memon for the appellant in Criminal Appeal No. 202 of 2006.

Mr. S. Pasbola for the appellant in Criminal Appeal No. 980 of 2006.

Mr. P.S. Hingorani, A.P.P. for the respondent in both appeals.

CORAM: V.G. PALSHIKAR &
SMT. NISHITA MHATRE, JJ.

DATED: 8TH DECEMBER, 2006

ORAL JUDGMENT (PER SMT. NISHITA MHATRE, J.):

1. These two criminal appeals have been preferred by

the accused challenging the order of the Special Court constituted under the Maharashtra Control of Organised Crime Act, 1999 (hereinafter referred to as "the MCOC Act"). The order has been passed on an application filed by the accused for discharging them from MCOC Special Case No. 4 of 2004 arising out of Powai Police Station C.R. No. 77 of 2004. The appellants have prayed that the charges levelled against them under the MCOC Act should be dropped. Criminal Appeal No. 202 of 2006 has been filed by the accused Nos. 1, 2, 4, 6, 7, 8 and 11. Criminal Appeal No. 980 of 2006 has been filed by the accused No.1.

2. One Navinchandra Dube and Hausila Upadhyaya, claimed to be members of Vishwa Hindu Parishad. When they were proceeding home, they were allegedly killed by the accused. The complainant who was with them, lodged the F.I.R. and a crime was registered under the C.R.No. 77 of 2004 for offences punishable under Sections 143 to 149, 302 and 34 of the Indian Penal Code read with Sections 4 and 25 of the Arms Act. The accused were arrested on different dates and remanded to judicial custody which was extended from time to time. The provisions of the MCOC Act were applied and the accused were produced before the Special Court under the MCOC Act on 23.5.2005.

3. Some of the accused had filed a writ petition seeking to quash the charges levelled against them and the order sanctioning their prosecution under the MCOC Act. This writ petition was withdrawn by the accused with liberty to file an appropriate proceeding before the competent authority. Accordingly, a criminal application was moved before the Special Court seeking a discharge of the accused under the MCOC Act and a prayer to be tried under the general law i.e. the Indian Penal Code. By an order dated 4.9.2005, the Special Court rejected the application filed by the accused. Hence the present appeals.

4. Undisputedly, the accused have been charged for offences punishable under the aforesaid sections. The sanction, necessary for trying them under the MCOC Act, was obtained from the Commissioner of Police, Brihanmumbai on 28.7.2004 under Section 23(2) of the MCOC Act. This sanction was accorded since the Commissioner of Police was convinced that the accused were members of an organised crime syndicate, namely, the Sherbahadur Khan gang. According to the Commissioner, there was sufficient evidence to prove continuous unlawful activities of this organised crime syndicate and that more than one chargesheet had been

filed before competent Courts within the last 10 years against the accused and the Court had taken cognizance of these chargesheets.

5. The learned counsel appearing for the accused submitted that there was no evidence at all on record that the accused were members of the Sherbahadur Khan gang, Sherbahadur Khan being accused No.1 in the present case. It was submitted that there were no chargesheets pending against Sherbahadur Khan himself except for the present chargesheet and C.R. No. 449 of 2000 from Sakinaka Police Station where he has been charged alongwith accused Nos. 2 and 8 under Sections 323 and 324 read with 34 of the Indian Penal Code. The learned counsel points out that accused No.6 had more than two chargesheets filed against him and he was involved in cases relating to some of the offences punishable under the Penal Code. It was further submitted that accused No.11 who is the wife of accused No.1 has no case pending against her and, therefore, the prosecution against her and others under the MCOC Act as members of the gang of Sherbahadur Khan under the MCOC Act, was unsustainable. According to the learned counsel, although some of the accused have been charged for offences punishable for more than three years in more than one case, none of these cases would give any

pecuniary advantage to the accused. None of these offences had been committed with the object of gaining pecuniary benefits or undue economic or other advantage for the accused. It is submitted that the provisions of law under which the accused are prosecuted, namely, Sections 323, 324, 325, 326 and 34 do not give any pecuniary or other advantage to the alleged perpetrator of those offences. The learned counsel urges that, there is no basis for the police to draw the conclusion that the accused were members of an organised crime syndicate. The accused were merely members of a family of which Sherbahadur Khan i.e. accused No.1 was the oldest member. Some of the accused are his sons, while others are his nephews. Accused No.11 is his wife. This, according to the learned counsel would not constitute an organised crime syndicate. Reliance was placed on the judgment of the Supreme Court in the case of **Ranjitsingh Brahmajeetsing Sharma v/s State of Maharashtra & anr.,** reported in **2005 ALL MR (Cri) 1538 (S.C.)** and the Division Bench judgment of this Court delivered in a group of writ petitions, the first being **Cri.W.P.No. 689 of 2005** between **Altaf Ismail Sheikh & ors. v/s The State of Maharashtra & ors.** as well as **State of Maharashtra v/s Bharat Baburao Gavhane & ors.,** reported in **2006 All MR (Cri) 2895**, to support the submissions made by the learned counsel for the accused.

6. The learned A.P.P. has admitted the details of the previous chargesheets submitted in this Court by the accused. He concedes that there are no other chargesheets which are required to be taken into consideration by this Court. He submits that although there may not be more than one chargesheet against accused No.1, there are several chargesheets pending against some of the accused. According to the learned A.P.P., the law stipulates that members of the organised crime syndicate should have continued unlawful activities either individually or jointly. The fact that some of the accused had been involved in offences punishable with a term of imprisonment for three years and more, would indicate that they were involved in continuing unlawful activity as members of an organised crime syndicate and, therefore, the prosecution under the MCOC Act was maintainable. He further submits that the chargesheet having already been filed before the Special Court, there is no need for this Court to interfere at this stage.

7. While dealing with this case, we must bear in mind the purpose enacting the MCOC Act. This Act was enacted in 1999 since it was felt by the legislature that the existing legal frame was inadequate for coping with the

menace of organised crime. The avowed object of the Act was to prevent and control criminal activity by organised crime syndicates or gangs and for matters connected therewith or incidental thereto. The statement of objects and reasons of this Act reads as under:-

STATEMENT AND OBJECT

. Organised crime has for quite some years now come up as a very serious threat to our society. It knows no national boundaries and is fueled by illegal wealth generated by contract killings, extortion, smuggling in contrabands, illegal trade in narcotics, kidnappings for ransom, collection of protection money and money laundering, etc. the illegal wealth and black money generated by the organised crime is very huge and has serious adverse effect on our economy. It is seen that the organised criminal syndicates make a common cause with terrorist gangs and foster narco terrorism which extend beyond the national boundaries. There is a reason to believe that organised criminal gangs are operating in the State and thus, there is

immediate need to curb their activities.

. It is also noticed that the organized criminals make extensive use of wire and oral communications in their criminal activities. The interception of such communications to obtain evidence of the commission of crimes or to prevent their commission is an indispensable aid to law enforcement and the administration of justice.

2. The existing legal frame work i.e. the penal and procedural laws and the adjudicatory system are found to be rather inadequate to curb or control the menace of organised crime. Government has, therefore, decided to enact a special law with stringent and deterrent provisions including in certain circumstances power to intercept wire, electronic or oral communication to control the menace of the organised crime.

3. As both Houses of the State Legislature are not in session and the Governor of Maharashtra is satisfied that circumstances exist which render it necessary for him to

> take immediate action to make a law for the purposes aforesaid, this Ordinance is promulgated.

8. Before we consider the merits of the present cases, it would be appropriate to set out certain provisions of the MCOC Act. Under Section 3 (1), a person who commits an offence of organised crime, can be punished with death or imprisonment for life and would also be liable to pay a fine of a minimum of rupees one lac. In case the offence is punishable by imprisonment for a term which is not less than five years, and which may extend to life imprisonment, the accused may be subjected to payment of fine as well, of a minimum of rupees five lacs.

9. Section 2(d) defines the expression continuing unlawful activity thus :-

> **Sec.2(d). "Continuing unlawful activity"** means an activity prohibited by law for the time being in force, which is a cognizable offence punishable with imprisonment of three years or more, undertaken either singly or jointly, as a mamber of an organised crime syndicate or on behalf of such syndicate in

> respect of which more than one chargesheets have been filed before a competent Court within the preceding period of ten years and that Court has taken cognizance of such offence.

The definition of organised crime is stipulated in Section 2(e) of the MCOC Act, thus:-

> **Sec.2(e). "Organised crime"** means any continuing unlawful activity by an individual, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimidation or coercion, or other unlawful means, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person or promoting unsurgency.

Section 2(f) defines the term organised crime syndicate thus:

> **Sec.2(f). "Organised crime syndicate"** means a group of two or more persons who, acting either singly or collectively, as a syndicate

or gang indulge in activities of organised crime.

10. A perusal of the aforesaid definitions indicates that an organised crime syndicate is a gang which indulges in organised crime. This gang may consist of two or more persons, either acting singly or collectively. Such a gang should be found to indulge in continuing unlawful activity i.e. an activity which is prohibited by law and is a cognizable offence punishable with imprisonment for three years and more. An activity would be termed as a continuing unlawful activity if more than one chargesheet has been filed before the competent Court against the members of the gang either individually or jointly within the preceding ten years. However, it must be established that such an offence or unlawful activity is undertaken by a person with the objective of gaining pecuniary benefits or gaining undue economic or other advantage for himself or any other person or for promoting insurgency. Such unlawful activity could include the use of violence or threat of violence or intimidation or coercion.

11. Taking into consideration the details of the various chargesheets which have been filed by the prosecution and admitted by the learned A.P.P., it is

obvious that some of the accused have been charged for offences which can, by no stretch of imagination, be considered to give the accused any pecuniary or undue economic or other advantage, either for the accused himself or for any other person. Offences punishable under Sections 323, 324, 325 and 326 read with 34 are not such as would provide any pecuniary benefit or undue economic gain to the accused. Some of these offences have resulted from a quarrel at a public water tap. Fist blows have been allegedly used by the accused in most of the cases whereas in one or two instances the accused has allegedly used a chopper or an iron rod to assault the victim. Amin Momin Khan, accused No.6 is involved in most of the cases mentioned and two of such cases relate to offences under Section 379 read with 34 of the Indian Penal Code. However, there is no material on record to indicate as to how the accused who may be a part of one family belong to an organised crime syndicate. The mere fact that the accused are related to each other and have committed offences either individually or jointly, would not, in our opinion, lead to the inference that the accused formed an organised crime syndicate. Admittedly, there is no chargesheet at all pending against accused No.11. The only allegation against accused No.11 is that, she sheltered two of her sons after they had allegedly committed certain

offences. There is no material on record to demonstrate as to how she could be linked with any of the offences allegedly committed by the accused in the previous 10 years. In our opinion, members of one family need not necessarily be part of an organised crime syndicate merely because some of the members of the family are involved in unlawful activities.

12. Apart from this, as aforesaid, the unlawful activity is not relatable to any pecuniary advantage or economic gain for the accused. The words in Section 2(e) "with the objective of gaining pecuniary benefits or gaining undue economic or other advantage" will have to be given some effective meaning. Applying the principle of *ejusdem generis* the words "other advantage" would have to be interpreted in the same manner as the previous terms "pecuniary benefits" or "undue economic advantage". A quarrel at a water tap which resulted in violence cannot be an offence which falls within this definition. Assaults on some persons also cannot be considered as offences which have been undertaken for pecuniary gain or undue economic advantage. The sanction order which we have perused also does not disclose that there was any material before the Commissioner of Police to arrive at such a conclusion. According to the learned A.P.P., these assaults were

carried out in order to gain supremacy in the local area where the accused resided and operated. However, a perusal of the sanction order does not reveal that this factor weighed with the Commissioner. In the present case, the order does not in any manner indicate that there was any material before the Commissioner or that he has considered the material showing that the accused had assaulted others for the purposes of economic gains.

13. We are fortified in the view that we have taken by the judgment of the **Ranjeetsingh Brahmajeetsing Sharma v/s State of Maharashtra,** reported in **2005 ALL MR (Cri) 1538 (S.C.).** While interpreting clauses (d), (e) and (f) of Section 2 of the MCOC Act, the Supreme Court has held thus -

> "31. Interpretation clauses contained in Sections 2(d), 2(e) and 2(f) are inter-related. An 'organised crime syndicate' refers to an 'organised crime' which in turn refers to 'continuing unlawful activity'. As at present advised, it may not be necessary for us to consider as to whether the words "or other lawful means" contained in Section 2(e) should be read "ejusdem generis"/ "noscitur-a-sociis" with the words (i)

violence, (ii) threat of violence, (iii) intimidation or (iv) coercion. We may, however, notice that the word 'violence' has been used only in Sections 146 and 153A of the Indian Penal Code. The word 'intimidation' alone has not been used therein but only Section 506 occurring in Chapter XXII thereof refers to 'criminal intimidation'. The word 'coersion' finds place only in the Contract Act. **If the words 'unlawful means' is to be widely construed as including any or other unlawful means, having regard to the provisions contained in Sections 400, 401 and 413 of the IPC relating to commission of offences or cheating or criminal breach of trust, the provisions of the said Act can be applied, which prima facie, does not appear to have been intended by the Parliament.**

32. The Statement of Objects and Reasons clearly states as to why the said Act had to be enacted. Thus, it will be safe to presume that the expression 'any unlawful means' must refer to any such act, which has a direct nexus with the commission of a crime which MCOC Act seeks to prevent or control. In

other words, an offence falling within the definition of organised crime and committed by an organised crime syndicate is the offence contemplated by the Statement of Objects and Reasons. There are offences and offences under the Indian Penal Code and other penal statutes providing for punishment of three years or more and in relation to such offences more than one chargesheet may be filed. As we have indicated hereinbefore, only because a person cheats or commits a criminal breach of trust, more than once, the same by itself may not be sufficient to attract the provisions of MCOCA."

14. In the case of **State of Maharashtra v/s Bharat Baburao Gavhane & ors., reported in 2006 ALL MR (Cri) 2895,** a learned Single Judge of this Court, while considering the provisions of Section 2(1)(e) of the MCOC Act has observed that, merely stating that a gang leader and his associates run a crime syndicate with a view to gain pecuniary benefits and advantages and supremacy over rival gangs by violence, intimation and other coercive means, is not sufficient to maintain a prosecution under the MCOC Act. The learned Judge has observed that there must be some material even at the

prima facie stage in that behalf.

15. In such circumstances, we have no doubt that the prosecution under the MCOC Act is not maintainable. The accused can only be prosecuted under the general law i.e. Indian Penal Code. Leaving that remedy open to the State, we allow the appeals. The charges and the sanction under the MCOC act are quashed and set aside. The appellants be tried for the offences mentioned under the Indian Penal Code and the Arms Act, in the regular Court.

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